IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TRANSCARDIAC THERAPEUTICS, INC., Plaintiff, v. AJIT YOGANATHAN, PH.D., JORGE H. JIMINEZ, PH.D., VINOD H. THOURANI, M.D., EMORY UNIVERSITY, GEORGIA TECH RESEARCH CORPORATION, and GEORGIA TECH FOUNDATION, INC., Defendants.	Civil Action No. 1:13-cv-03089-AT

DEFENDANT EMORY UNIVERSITY'S CITATION OF SUPPLEMENTAL AUTHORITY IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND

Defendant Emory University ("Emory") respectfully provides notice of the previously-uncited decision in *University of Kentucky Research Foundation, Inc. v. Niadyne, Inc.*, Civ. No. 13-16-GFVT, 2013 WL 5943921 (E.D. Ky. Nov. 5, 2013), which came to Emory's attention after it filed its Opposition to Plaintiff's Motion to Remand on November 14, 2013. The decision in *Niadyne* directly supports Emory's position (as stated at pages 23-24 & n.20 of its Opposition) that the 2011 America Invents Act "had the effect of abrogating *Holmes Grp., Inc. v. Vornado*

Air Circulation Sys., Inc.[, 535 U.S. 826 (2002),] by allowing counterclaims arising under federal patent law to provide grounds for federal removal jurisdiction." 2013 WL 5943921, at *5 (citing, *inter alia*, Joe Matal, *A Guide to the Legislative History of the America Invents Act: Part II of II*, 21 Fed. Cir. B.J. 539 (2012)). The *Niadyne* case involves a federal patent counterclaim, as opposed to the non-patent claims at issue in the decisions cited on page 14 of Plaintiff's Reply to Emory's Opposition to Plaintiff's Motion to Remand.[1]

Respectfully submitted, December 20, 2013.

s/ C. Allen Garrett Jr.

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[1] The decision in *MRC II Distribution Co. L.P. v. Coelho*, No. 2:12-cv-03539-ODW(JCGx), 2012 WL 3810257, *4 (C.D. Cal. Sept. 4, 2012), upheld federal jurisdiction over a copyright declaratory judgment claim. Its passing reference to a copyright "counterclaim" not triggering federal jurisdiction was *dicta*. *Id.*

CERTIFICATE OF FONT AND POINT SELECTION

I hereby certify that the foregoing was prepared in Times New Roman font, 14 point type, in compliance with Local Rule 5.1(C).

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notifications of such filing to the following attorneys of record:

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